

- DECISION -

Claimant:
HELENE M SNYDER

Decision No.: 1084-BR-14

Date: May 14, 2014

Appeal No.: 1401756

S.S. No.:

Employer:
HELIX HEALTH SYSTEM INC

L.O. No.: 60

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the *Maryland Rules of Procedure, Title 7, Chapter 200*.

The period for filing an appeal expires: June 13, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision.

The claimant returned to work after being out on "FMLA" When the claimant returned to work, the claimant was placed on an administrative leave while the employer conducted an investigation of the claimant's errors on a survey that involved their certification for accreditation for pathology. The administrative leave and investigation had been delayed due to the claimant's being out on "FMLA". The claimant had twenty four hours to

respond to the allegations that she continued to make errors after receiving a final written warning.

The claimant asked if she was going to be terminated. The claimant was informed that it depended on what the investigation showed. The claimant was told that the investigation could result in retraining, disciplinary actions or termination. The claimant decided to quit. The claimant was advised again, that she had twenty four hours to think about it. Thereupon, the claimant tendered her resignation on December 16, 2013.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d); COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

“Due to leaving work voluntarily” has a plain, definite and sensible meaning, free of ambiguity. It expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally and of his or her own free will, terminated the employment. *Allen v. Core Target Youth Program, 275 Md. 69 (1975)*. A claimant’s intent or state of mind is a factual issue for the Board of Appeals to resolve. *Dept. of Econ. & Empl. Dev. v. Taylor, 108 Md. App. 250, 274 (1996), aff’d sub. nom., 344 Md. 687 (1997)*. An intent to quit one’s job can be manifested by actions as well as words. *Lawson v. Security Fence Supply Company, 1101-BH-82*. In a case where medical problems are at issue, mere compliance with the requirement of supplying a written statement or other documentary evidence of a health problem does not mandate an automatic award of benefits. *Shifflet v. Dept. of Emp. & Training, 75 Md. App. 282 (1988)*.

There are two categories of non-disqualifying reasons for quitting employment. When a claimant voluntarily leaves work, he has the burden of proving that he left for good cause or valid circumstances based upon a preponderance of the credible evidence in the record. *Hargrove v. City of Baltimore, 2033-BH-83; Chisholm v. Johns Hopkins Hospital, 66-BR-89*.

Quitting for “good cause” is the first non-disqualifying reason. *Md. Code Ann., Lab. & Empl. Art., § 8-1001(b)*. Purely personal reasons, no matter how compelling, cannot constitute good cause as a matter of law. *Bd. Of Educ. Of Montgomery County v. Paynter, 303 Md. 22, 28 (1985)*. An objective standard is used to determine if the average employee would have left work in that situation; in addition, a determination is made as to whether a particular employee left in good faith, and an element of good faith

is whether the claimant has exhausted all reasonable alternatives before leaving work. *Board of Educ. v. Paynter*, 303 Md. 22, 29-30 (1985)(requiring a “higher standard of proof” than for good cause because reason is not job related); also see *Bohrer v. Sheetz, Inc.*, Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984). “Good cause” must be job-related and it must be a cause “which would reasonably impel the average, able-bodied, qualified worker to give up his or her employment.” *Paynter*, 303 Md. at 1193. Using this definition, the Court of Appeals held that the Board correctly applied the “objective test”: “The applicable standards are the standards of reasonableness applied to the average man or woman, and not to the supersensitive.” *Paynter*, 303 Md. at 1193.

The second category or non-disqualifying reason is quitting for “valid circumstances”. *Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(1)*. There are two types of valid circumstances: a valid circumstance may be (1) a substantial cause that is job-related or (2) a factor that is non-job related but is “necessitous or compelling”. *Paynter* 202 Md. at 30. The “necessitous or compelling” requirement relating to a cause for leaving work voluntarily does not apply to “good cause”. *Board of Educ. v. Paynter*, 303 Md. 22, 30 (1985). In a case where medical problems are at issue, mere compliance with the requirement of supplying a written statement or other documentary evidence of a health problem does not mandate an automatic award of benefits. *Shifflet v. Dept. of Emp. & Training*, 75 Md. App. 282 (1988).

Section 8-1001 of the Labor and Employment Article provides that individuals shall be disqualified from the receipt of benefits where their unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without, valid circumstances. A circumstance for voluntarily leaving work is valid if it is a substantial cause that is directly attributable to, arising from, or connected with the conditions of employment or actions of the employing unit or of such necessitous or compelling nature that the individual had no reasonable alternative other than leaving the employment.

Where a claimant quit because he feared a discharge was imminent, but he had not been informed that he was discharged, the resignation is without good cause or valid circumstances. *Roffe v. State of South Carolina Wateroe River Correctional Institute*, 576-BR-88. In the instant case, the credible evidence established that the claimant resigned because she feared her discharge was imminent but she had not been informed that she was going to be discharged.

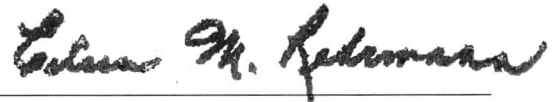
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the claimant did not meet her burden of demonstrating that she quit for good cause or valid circumstances within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1001*. The decision of the hearing examiner shall be reversed for the reasons stated herein.

DECISION

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause or valid circumstances, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1001. The claimant is disqualified from receiving benefits from the week beginning December 15, 2013 and until the claimant becomes re-employed, earns at least fifteen times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

HELENE M. SNYDER
HELIX HEALTH SYSTEM INC
DONNA D. HENRY PARALEGAL
HELIX HEALTH SYSTEM INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

HELENE M SNYDER

SSN # 214-68-7185

Claimant

vs.

HELIX HEALTH SYSTEM INC

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1401756

Appellant: Employer

Local Office : 60 / LARGO

February 25, 2014

For the Claimant: PRESENT, GEORGE SNYDER

For the Employer: PRESENT, DONNA D. HENRY, NIKKI MCKOY, LAVERNE O'BANNON

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD Code Annotated Labor and Employment Article, Title 8, Sections 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant, Helene M Snyder, began working for this employer, Helix Health System Inc, on July 24, 2000, and her last day worked was December 16, 2013. At the time of her separation from employment, the claimant worked full-time as a medical technologist, earning an hourly salary of \$31.55.

The claimant was placed on an unpaid administrative leave of absence. The claimant had just returned from extended family medical leave on December 16, 2013, when the employer placed her on an indefinite and unpaid administrative leave for performance reasons. The director reviewed with the claimant her past warnings and evaluations and explained that she was being placed on an unpaid administrative leave pending investigation.

The claimant was told she had 24 hours to respond. The claimant asked if she was being discharged, to

which the director indicated that she could be discharged and the claimant responded, "I might as well resign."

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1003 provides for a disqualification from benefits where the claimant is discharged or suspended as a disciplinary measure for misconduct connected with the work. The term "misconduct" is undefined in the statute but has been defined as "...a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer's premises." [Rogers v. Radio Shack, 271 Md. 126, 132 (1974)].

Md. Code Ann., Labor & Emp. Article, Section 8-1001, states an individual shall be disqualified for benefits where unemployment is due to leaving work voluntarily without good cause arising from or connected with the conditions of employment or the actions of the employer, or without valid circumstances. A circumstance is valid only if it is (i) a substantial cause directly attributable to, arising from, or connected with conditions of employment or the actions of the employing unit; or (ii) of such necessitous or compelling nature the individual has no reasonable alternative other than leaving the employment.

EVALUATION OF EVIDENCE

In Tillery v. Maryland News Distribution Company, 812-BR-92, the Board of Appeals held "Being placed on an involuntary, unpaid leave of absence...is the full equivalent of a discharge, for unemployment insurance purposes." Accordingly, this matter will be treated as a discharge for the allocation of the burden of proof.

Therefore, the employer had the burden to show, by a preponderance of the credible evidence that the claimant's termination was for conduct which rose to the level of misconduct or gross misconduct, pursuant to the Maryland Unemployment Insurance Law. In the case at bar, the employer did not meet this burden.

In Stevens v. Harford County Schools, 13-BR-82, the Board of Appeals held "Termination or layoff due to a lack of work or job abolishment is a discharge, but not for misconduct."

Similarly, in the case at bar, the employer placed the claimant on an unpaid leave of absence or administrative leave for performance reasons. The burden shifted to the employer to show misconduct on the claimant's part. Insufficient evidence was presented to show misconduct on the claimant's part. Therefore, the claimant was discharged, but not for misconduct.

Accordingly, the employer failed to meet its burden in this case and the claimant's discharge was for non-disqualifying reasons, and benefits are, therefore, allowed.

DECISION

IT IS HELD the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1002 or 8-1003. No disqualification is imposed based upon the claimant's separation from employment with the employer. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is affirmed.



C A Applefeld, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right to Petition for Review

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a review either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal

must be filed by March 12, 2014. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787
Phone 410-767-2781

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: February 12, 2014
BLP/Specialist ID: UTW35
Seq No: 002
Copies mailed on February 25, 2014 to:

HELENE M. SNYDER
HELIX HEALTH SYSTEM INC
LOCAL OFFICE #60
DONNA D. HENRY